

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07cr154

UNITED STATES OF AMERICA

vs.

ALVIN WOODY (1)

KATHLEEN GIACOBBE (2)

PORFIRIO ORTA-ROSARIO (3)

STEPHEN GIACOBBE (4)

CHRISTOPHER OTIKO (5)

ORDER

THIS MATTER is before the Court upon motion of defendant Alvin Woody to dismiss, or, in the alternative, to suppress, or, in the alternative, to appoint a special master. (Doc. No. 64).

The Court heard argument of counsel on December 3, 2007. During the hearing, counsel for Woody conceded that there was no evidence that any privileged information of the defendant had been provided to the prosecution team or any other defendant. Accordingly, the Court finds no basis to sanction the government by dismissing the indictment or suppressing all documents seized from him. Weatherford v. Bursey, 429 U.S. 545, 558 (1977) (no constitutional violation where prosecutors do not receive privileged information). Thus, the Court denies the defendant's motion to dismiss, or, in the alternative, to suppress.

However, based on the representations of counsel and a review of the record, the Court finds a sufficient basis to warrant a further evidentiary hearing on the portion of the motion requesting a special master to regulate discovery. The magistrate judge is appointed to hear and determine whether the procedure implemented by the government is sufficient to protect against the unauthorized disclosure of privileged information, and, if not, to prescribe the appropriate

measures. Additionally, the magistrate judge is appointed resolve any future controversy whether a particular piece of evidence is privileged, pending further order of the Court.

IT IS, THEREFORE, ORDERED that the defendant's motion (Doc. No. 64) is **DENIED in part**, and **REFERRED in part** to the magistrate judge, who is designated to resolve the remaining portion of the defendant's motion, pursuant to 28 U.S.C. § 636(b)(1)(A).

Signed: December 4, 2007

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

